

# DRAWING, ADOPTING, AND DEFENDING LAWFUL REDISTRICTING PLANS

---



Chad Dunn

January 2021

# Overview

1. UCLA VRP Background
2. Redistricting Process
3. Basic Redistricting Principles
4. Review of selected cases: *Harding v. Dallas County, TX*; *Beaumont Independent School District v. United States*; *Hubbard v. Lone Star College System*.
5. The Federal Voting Rights Act and Amendments
6. Vote Dilution Claims Under the VRA and 14<sup>th</sup> Amendment

# Introduction

- ❑ The UCLA Voting Rights Project was founded in August of 2018 by Dr. Matt Barreto, PhD., a renowned voting rights expert witness, and Chad Dunn, J.D., a prolific voting rights attorney. The Project has grown from offering an interdisciplinary course on voting rights law, expert analysis, and legal practice that was the first of its kind in the United States, to becoming a flagship project at UCLA. Now, the Project has expanded to operate as a legal clinic, research center, and policy advocacy organization.
- ❑ The UCLA Voting Rights Project Employs:
  - ❑ 4 Lawyers
  - ❑ 3 Social Science Fellows
  - ❑ 3 Research Analysts
  - ❑ 5 Legal Fellows

# Introduction

- Chad Dunn, Legal Director of the UCLA Voting Rights Project
  - ▣ Litigated over 100 Voting Right Act and voting cases since 2003
    - including dozens of trials to the court, special three judge courts, or juries
  - ▣ Handled appeals in Federal voting and civil rights cases before the Fifth, Ninth, Tenth, Eleventh and D.C. Circuits
    - including over two dozen federal oral arguments & many State court appellate oral arguments
  - ▣ Represented or provided advice to numerous political subdivisions regarding map drawing
  - ▣ Has handled appeals before numerous State supreme courts, including the VRP led brief in the Santa Monica CVRA case currently pending at the California Supreme Court

# Redistricting Process

- ❑ System Design:
  - ▣ Design a fair and organized public process
  - ▣ Consider redistricting principles
  - ▣ Coordinate and observe field hearings
  - ▣ Receive, sort, and consider written public input
  - ▣ Weigh stakeholder considerations

# Redistricting Process

- ❑ Procure and consider relevant subject matter expertise:
  - ❑ Racially polarized voting analysis
  - ❑ Historical background and research
  - ❑ Section 2 legal opinions
  - ❑ Mapping possibilities

# Redistricting Process

- ❑ Debate and Consideration:
  - ▣ Coordinate and review proposals from Commission
  - ▣ Receive, review, and report on stakeholder proposals
  - ▣ Facilitate and debate and amendment process
- ❑ Final Adoption and Public Report:
  - ▣ Coordinate final public review and input
  - ▣ Review and collect legal opinions concerning final map
  - ▣ Address public inquiries concerning the map and process

# Basic Federal Redistricting Principles

Under the 14<sup>th</sup> and 15<sup>th</sup> Amendment:

- ❑ Districts must not be drawn based on the consideration of race unless mandated by VRA.
- ❑ Equal Protection dictates that a State's redistricting plan with population deviations among districts that are greater than 10% are unconstitutional in the absence of a compelling justification.
- ❑ Federal redistricting plans for Congressional districts must be as close to equal as possible.



# *Harding v. Dallas*

- Dunn represented the County of Dallas, TX against a Section 2 VRA lawsuit by Anglo voters in Dallas County.
- In 2011, Anglos in Dallas County were in the minority, consisting of 33% of the population. Dallas County's Commissioners Court adopted a map reflecting these demographics, which was pre-cleared under Section 5 of the VRA.
- Anglo voters alleged that the 2011 county commissioner map violated Section 2 of the VRA, claiming the map diluted the voting power of the Anglo minority.
- The Federal district court found that Dallas County did not violate Section 2 of the VRA through its redistricting maps; the Fifth Circuit affirmed.

# *Beaumont Independent School District v. United States*

- ❑ Dunn represented the Beaumont Independent School District (BISD) in crafting a redistricting plan and defending more than a half dozen voting rights cases.
- ❑ The majority of officers on the BISD school board were Black preferred.
- ❑ Anglo citizens engineered a referendum to force the board to adopt a redistricting plan that would give them majority control.
- ❑ Anglo citizens brought claims in State court and two different Federal courts, including Federal claims arising under both Sections 2 and 5 of the VRA.
- ❑ Ultimately, the Courts prohibited the district boundary changes.

# *Hubbard v. Lone Star College System*

- ❑ Dunn represented African American and Latino citizens in the Lone Star College System District in a vote dilution case under Section 2 of the VRA.
- ❑ Lone Star College is one of the largest community colleges in the country serving a majority-minority population but governed by a majority Anglo supported board.
- ❑ The at-large method of electing members of the Lone Star College System Board of Education (“Board”) resulted in African American and Latino citizens having less of an opportunity than Anglo citizens to elect candidates of their choice.
- ❑ As a result of the lawsuit, a consent decree was reached in which the Board discontinued the use of at-large elections and adopted a single-district voting plan enabling African American and Latino voters to elect candidates of their choice.
- ❑ The date of election was also moved from May in odd numbered years to November in even numbered years.

# VRA Section 2

- ❑ 1964 VRA had no enforcement mechanism or Federal oversight in the Act's requirements
- ❑ 1965 Voting Rights Act, Section 2
  - ❑ (a) **No voting qualification or prerequisite to voting or standard, practice, or procedure** shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section.

# VRA Section 2

- Section 2(b):
- A violation of subsection (a) is established if, **based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation** by members of a class of citizens protected by subsection (a) **in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice**. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

# VRA Section 5

- Preclearance
- SEC. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure

# 1982 Amendments

- ❑ *Mobile v. Bolden* (1980) held that there was only a violation if the laws maintained discriminatory purpose.
- ❑ The Senate added a new interpretation of Section 5, allowing courts to examine the effects of the law.
- ❑ Congress considered adopting a nationwide preclearance requirement but decided instead to keep the old formula.

# Section 2-Thornburg v. Gingles

- Liability can be established premised upon discriminatory impact or discriminatory intent.
- *Gingles* Preconditions — *Thornburg v. Gingles*, 478 U.S. 30 (1986)
  1. Is the minority group sufficiently large and geographically compact to constitute a majority in a single-member district?
  2. Is the minority group politically cohesive?
  3. Does the white majority vote sufficiently as a bloc to enable it, in the absence of special circumstances, to usually defeat the minorities preferred candidate?
  4. Lack of proportionality? — *Johnson v. DeGrandy*, 512 U.S. 997 (1994)



# Section 2-Thornburg v. Gingles

## **Totality of the Circumstances factors to consider (1982 Senate Report) *Gingles*, 478 U.S. 30, 36-38 (citing Senate Report 97-417):**

1. The extent of any history of official discrimination with respect to the minorities' right to vote
2. The extent to which potentially discriminatory voting practices or procedures, like majority voting requirements or anti-single shot provisions, have been used
3. If there is a candidate-slating process, whether minority candidates have been denied access to it
4. The extent to any discrimination against minorities in education or other areas, which might hinder effective participation in the political process
5. Whether political campaigns have been characterized by racial appeals
6. The extent to which minority group members have been elected to public office
7. Whether there is a lack of responsiveness on the part of elected officials to the minority groups particularized needs
8. Whether the policy of supporting the use of voting policy or practice is tenuous

# Intent - Arlington Heights Factors

- ❑ Village of Arlington Heights v. Metropolitan Housing 1977
  - ❑ Chicago, IL suburb
- ❑ Zoning ordinance blocked families of socioeconomic or racial backgrounds from residing in the neighborhood.
- ❑ Court applied a discriminatory intent test:
  - 1) Does the official action affect a protected class in greater proportion than others, and if so,
  - 2) Was the official action was intended to discriminate against a suspect or protected class

# Intent - Arlington Heights Factors

1. “The impact of the official action,” especially “whether it bears more heavily on one race than another,” however, “impact alone is not determinative”
2. “The historical background of the decision, particularly if it reveals a series of official actions taken for invidious purposes”
3. “The specific sequence of events leading up the challenged decision”
4. “Departures from the normal procedural sequence” or “[s]ubstantive departures”
5. “The legislative or administrative history . . . especially where there are contemporary statements by members of the decision-making body, minutes of its meetings, or reports”

# Arlington Heights Applied to Districts

1. Analysis of the racial impact of cracking and packing decisions within the plan
2. Court rulings on past decade districting efforts as well as history of vote denial devices in the jurisdiction
3. Analysis of events leading up to the district plan, for example, was there a policy issue (school segregation, immigration) debated that flamed tensions heading into redistricting
4. How was this districting plan adopted in comparison to how the body adopts other laws and policies
5. What did supporters (and sometimes opponents) say publicly about why they were supporting this districting plan, and were the comments credible or pretext, suggesting an alternative motive

# Conclusion

- ❑ Fair process is critical for public confidence but also for addressing any later filed litigation.
- ❑ In most cases, a fair process and outcome will still leave some community members feeling left out.
- ❑ Careful and thorough public discussion and response to public inquiries is important.
- ❑ Close attention to science and data is the key to a fair and legal map that will withstand court review.

THANK YOU!

CONTACT US:



Prof. Chad Dunn: [chad@uclavrp.org](mailto:chad@uclavrp.org)